

Message Text

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ACTION ERDA-07

INFO OCT-01 NEA-10 ISO-00 OES-07 AID-05 FEA-01 ACDA-10
CIAE-00 INR-07 IO-14 L-03 NSAE-00 NSC-05 EB-08
NRC-07 DODE-00 SS-15 SP-02 SSO-00 INRE-00 NSCE-00
ERDE-00 /102 W

-----128393 290520Z /10

O 280837Z JUL 77

FM AMCONSUL BOMBAY

TO SECSTATE WASHDC IMMEDIATE 7497

AMEMBASSY NEW DELHI PRIORITY

UNCLAS SECTION 1 OF 2 BOMBAY 1791

C O R R E C T E D C O P Y REF (STATE 178761 VICE 11652)

E. O. 11652: N/A

TAGS: TECH, IN

SUBJ: PROPOSED AGREEMENT ON TARAPUR FEASIBILITY STUDY

REF: STATE 178761 (NOTAL)

WE HAVE JUST RECEIVED FROM THE ATOMIC POWER AUTHORITY
COMMENTS ON THE REDRAFT (REFTEL) OF THE FEASIBILITY STUDY
(WITH CONGEN NOTATIONS OF THE TELEGRAMS TRANSMITTING THE
SUBSTANCE OR TEXT OF THESE COMMUNICATIONS BETWEEN CONGEN AND
WASHINGTON IN BRACKETS).

FULL TEXT READS:

QUOTE

CCE/APA/39/77

JULY 27, 1977

DEAR MR. COURTNEY:

KINDLY REFER TO MR. ROSENTHAL'S LETTER OF JULY 21
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(STATE 178761) CONVEYING AN ENTIRELY REVISED DRAFT OF THE
PROPOSED ERDA-GOI AGREEMENT. WE BELIEVE THAT IT IS DESIRABLE
AT THIS STAGE TO BRIEFLY REVIEW THE DEVELOPMENTS ON THE
PROPOSED STUDY SO THAT THE EXTENSIVE EFFORTS MADE BY BOTH
SIDES PROVE USEFUL AS FAR AS POSSIBLE.

THE FIRST DRAFT OF THE AGREEMENT, RECEIVED ON APRIL 13,

(STATE 81468) WAS SOMEWHAT AMBIGUOUS ABOUT THE SCOPE AND PURPOSE OF THE STUDY AND ALSO ENVISAGED SUBSIDIARY AGREEMENTS BETWEEN ERDA AND GE AS WELL AS BETWEEN GOI AND GE. THE LATTER IN PARTICULAR HAD CLAUSES CONCERNING INDEMNITY ETC. WHICH GOI FOUND UNACCEPTABLE. SUBSEQUENT EXCHANGES ON THSE AND OTHER ASPECTS IN COURSE OF WHICH BOTH PARTIES MADE SEVERAL SUGGESTIONS, RESULTED IN THE REVISED DRAFT AGREEMENT OF MAY 23 (BOMBAY 1200). BOTH ERDA AND GOI FOUND THIS DRAFT ENTIRELY ACCEPTABLE AND WE WERE, IN FACT, PREPARING FOR EXECUTION OF FORMAL DOCUMENTS. HOWEVER, ON JUNE 29, (STATE 150616) ERDA FORWARDED AN ADDITIONAL CLAUSE, 8 E, RELATING TO THE USE OF THE PROPOSED STUDY. WE HAD DIFFICULTY WITH TWO POINTS IN THIS REGARD. IT NOW TRANSPIRES THAT WHILE THERE IS ALMOST FULL AGREEMENT ON BOTH THESE POINTS, ERDA HAVE PROPOSED CHANGES IN 7 OUT OF THE 14 CLAUSES AS WELL AS IN THE PREAMBLE. IN SPITE OF OUR RELUCTANCE TO REOPEN THE DRAFT AGREEMENT TO THIS EXTENT, WE HAVE ONCE AGAIN EXAMINED THE REVISED DRAFT CLAUSE BY CLAUSE AND ENCLOSE OUR COMMENTS.

WE WOULD ALSO LIKE TO CLARIFY A MISUNDERSTANDING AS EVIDENT FROM THE SUMMARY FORWARDED BY THE ACTING CONSUL GENERAL ON JULY 21, 1977. (STATE 169691). PRIMARILY, THIS SEEMS TO ARISE FROM CONFUUUNG THE USE OF THE STUDY WITH ITS SCOPE. THERE IS NO DIFFICULTY IN REGARD TO THE LATTER IF WE FOLLOW THE AGREED CLAUSES 1 AND 4 A OF THE DRAFT AGREEMENT

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(THE US CONSUL GENERAL'S LETTER OF MAY 16 REFERS) (STATE 109391). GOI HAVE NOT SOUGHT, NOR ARE SEEKING, TO EXTEND THE SCOPE OF THE STUDY BEYOND THAT COVERED BY THESE CLAUSES. AS SUCH THE APPREHENSION OF PUSHING ERDA INTO ACTIVITIES THAT GO BEYOND ITS CHARTER OR RAISE COMPLEX QUESTIONS OF LAW AND POLICY SHOULD NOT ARISE. IN FACT THERE IS A POSSIBILITY OF REDUCING THE SCOPE THROUGH A PROPER COORDINATION OF EFFORTS AND THUS SPEND TH FUNDS EARMARKED BY ERDA MORE EFFECTIVELY IN ACHIEVING THE END PURPOSE OF INCREASING TAPS'S FUEL POOL STORAGE CAPACITY.

GOI'S CONCERN ON THE NEW CLAUSE 8 E CENTERED ON THE USE OF THE RESULTS OF THE STUDY. THE WORDS IN QUESTION IN CLAUSE 8 E TENDED TO RESTRICT THE USE OF THE STUDY TO FEASIBILITY DETERMINATION ONLY. THIS IS OF VERY LITTLE CONSEQUENCE TO GOI AS IT COULD BE DONE BY AND LARGE BY OUR EXPERTS THEMSELVES. THE RESTRICTION THUS LARGELY NULLIFIED THE STUDY'S UTILITY AS WE WERE APPARENTLY PREVENTED FROM PROCEEDING FURTHER ON THE BASIS OF ITS RESULTS WITHOUT ENTERING INTO AN AGREEMENT WITH GE, A STEP WHICH HAD PRESENTED CONSIDERABLE PROBLEMS EARLIER AND HAD THEREFORE BEEN OBIATED.

HOWEVER, NOW THAT ERDA ARE WILLING TO AVOID THE LIMITATIONS
ON USE OF THE STUDY BY DROPPING THE WORDS "STUDYING THE
FEASIBILITY" FROM THE ORIGINALLY PROPOSED CLAUSE 8 E IT
SHOULD BE POSSIBLE TO REVERT TO THE MQUALLY SETTLED MY
DRAFT OF THE PROPOSED AGREEMENT WITH THE MODIFIED CLAUSE
8 E. THE ONLY PROBLEM THEN REMAINING WOULD BE THE ADDITION OF
A SENTENCE IN CALUSE 9. WE NEED A CLEARER UNDERSTANDING OF
THIS PURPOSE AND IMPLICATION OF THIS ADDITION AS THAT
FURNISHED IN THE SUMMARY RAISES MORE QUESTIONS THAN IT
SOLVES.

AS AN ALTERNATIVE COURSE OF ACTION, WE HAVE SUGGESTED
TO YOU THAT THE STUDY CAN PERHAPS BE PURSUED THROUGH
INHOUSE CAPABILITIES OF ERDA AND IAEC. ERDA CAN ALSO ASSIST
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BY ENABLING A REVIEW OF EQUIPMENT AND METHODS ADOPTED BY A
U.S. UTILITY IN SIMILAR WORK. IT WAS AGREED THAT YOU WILL
EXPLORE THIS ALTERNATIVE WITH ERDA.

YOURS SINCERELY,
SD./-J.C.SHAH

END QUOTE

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ACTION ERDA-07

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FM AMCONSUL BOMBAY

TO SECSTATE WASHDC IMMEDIATE 7498

AMEMBASSY NEW DELHI PRIORITY

UNCLAS SECTION 2 OF 2 BOMBAY 1791

E. O. 11652: N/A

TAGS: TECH, IN

SUBJ: PROPOSED AGREEMENT ON TARAPUR FEASIBILITY STUDY

REF: STATE 11652 (NOTAL)

QUOTE

COMMENTS ON REVISED DRAFT OF AGREEMENT BETWEEN ERDA

AND GOI RECEIVED ON JULY 21, 1977 (STATE 116&22)

PREAMBLE:

THE FOURTH PARA IN THE EARLIER DRAFT HAS BEEN OMITTED,
PERHAPS INADVERTENTLY.

CLAUSE 1:

(I) THE SCOPE OF WORKS CONVEYED BY USG ON JULY 9,
MENTIONED (SUBPARA 4, PHASE 1) "REVIEW OF DISPOSAL REQUIRE-
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MENTS OF THE EXISTING SPENT FUEL HARDWARE". HOWEVER, THE
REVISED TEXT LIMITS THIS REVIEW TO "DETERMINE THE NEED FOR
ALTERNATIVE DISPOSITION, IF ANY" OF SUCH HARDWARE. THIS IS
NOT SATISFACTORY AS MERE DETERMINATION OF NEED SERVES VERY
LITTLE PURPOSE.

(II) TOWARDS PHASE II WORKS THE REVISED TEXT ONLY PROVIDES
FOR A "A MORE DETAIL BASES FOR MEETING SPENT FUEL STORAGE
NEEDS AT THE TARAPUR STATION". THE TEXT CONVEYED ON JULY 9
HOWEVER PROVIDED "BOTH NEAR TERM AND LONG RANGE BASES FOR
MEETING SPENT FUEL STORAGE NEEDS AT THE TARAPUR STATION".
THE LATTER WAS MORE APPROPRIATE AND IN LINE WITH GOI'S
THINKING.

CLAUSE 4A:

USG PROPOSES TO COMPLETELY DELETE THIS NOW. IT MAY BE
POINTED OUT IN THIS REGARD THAT THIS CLAUSE WAS INITIALLY
PROPOSED BY GOI TO RENDER THE STUDY PURPOSEFUL AND WAS
ACCEPTED IN ESSENCE BY USG VIDE THEIR LETTER OF MAY 16, 1977.
GOI WOULD PREFER TO RETAIN ORIGINAL CLAUSES 1 AND 4A FOR THE
PURPOSE OF DEFINING THE SCOPE OF STUDY.

CLAUSE 8:

APART FROM SOME MINOR POINTS ON OTHER SUBCLAUSES,OUR
COMMENTS ON CLAUSE 8E ARE AS FOLLOWS:

ACCEPTANCE BY USG OF OUR SUGGESTION TO DROP THE THREE
WORDS "STUDYING THE FEASIBILITY" FROM THIS CLAUSE IS
APPRECIATED.
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USG POINT OUT THAT THE WORD "FOR" INSTEAD OF "OF" IN
THE 5TH LINE MIGHT BE READ 'AS COMMITTING ERDA TO PROVIDE AID
IN INCREASING NUMBER OF SPENT FUEL POOLS AT TARAPUR. AND
THAT ADDITIONAL AID OF THIS NATURE WOULD RAISE COMPLEX
POLICY AND LEGAL ISSUES.'

WE DO NOT QUITE SEE THIS BUT CAN DISCUSS IT SEPARATELY
WITH ERDA AS SUGGESTED BY THEM.

CLAUSE 9:

USG HAVE NOW SUGGESTED AN ADDITIONAL FINAL SENTENCE
AS FOLLOWS:

"THIS INDEMNITY SHALL APPLY REGARDLESS OF FAULT (OF
WHATEVER DEFREE) ON THE PART OF ERDA, ITS CONTRACTORS
OR SUBCONTRACTORS AND SHALL BE ENFORCEABLE DIRECTLY
AGAINST THE GOVERNMENT OF INDIA BY SUCH CONTRACTORS
AND SUBCONTRACTORS."

WE ARE UNABLE TO FULLY COMPREHEND PRECISELY WHAT THIS
ADDITION IS INTENDED TO ACHIEVE, EVEN WITH THE EXPLANATIONS
PROVIDED. THE MAIN PURPOSE OF THE CLAUSE IS TO IDEMNIFY
ERDA AND OTHERS AGAINST DAMAGES RESULTING FROM THE USE BY
GOI OF THE INFORMATION FURNISHED BY THEM. REFERENCE TO
NEGLIGENCE IN THE EXPLANATION WOULD IN THIS CONTEXT APPEAR
TO IMPLY THAT THE INDEMNITY WOULD BE EFFECTIVE EVEN IF THE
INFORMATION WAS FURNISHED THROUGH NEGLIGENCE OR FAULT ON THE
PART OF ERDA OR ITS CONTRACTORS ETC. IF SO, I.E. IN THE EVENT
OF FAULT OR NEGLIGENCE BY THEM, HOW CAN THE QUESTION OF
THEIR ENFORCING SUCH AN INDEMNITY DIRECTLY AGAINST GOI AT
ALL ARISE? ON THE OTHER HAND, IF THE REFERENCE IS TO
NEGLIGENCE BY GOI, THE OPENING SENTENCE OF THIS CLAUSE
PROVIDES MORE THAN ADEQUATE IDEMNITY COVERAGE TO ERDA
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AND OTHERS.

THERE ARE OTHER DIFFICULTIES ALSO WITH RESPECT TO THIS
ADDITION, THE MOST ACUTE BEING THE IMPLICATION THAT GOI
WOULD HAVE TO IDEMNIFY AGAINST DAMAGES ARISING OUT THE
FAULT ON THE PART OF ERDA OR ITS CONTRACTORS ETC. GOI ARE
QUITE UNABLE TO SEE THE EQUITY OF SUCH A PROPOSAL.

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Message Attributes

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